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C O N F I D E N T I A L SECTION 01 OF 02 KINSHASA 000874

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SUBJECT: MOVES AFOOT TO REVISE CONSTITUTION?

Classified By: Charges d'Affaires a.i. Samuel V. Brock for reasons 1.4
(b) and (d).

¶1. (C) Summary: Despite denials by senior level GDRC officials, it appears an inter-institutional commission has met to discuss the possibility of constitutional amendments in three areas: halting plans to create 15 new provinces (part of the decentralization process); changing the presidential mandate from two five-year terms to a seven-year mandate with no term limit; and allowing the president to chair the High Council of Magistrates (CSM). Critics have charged that the constitution does not allow any revisions in the last two categories -- changing the presidential terms and executive branch involvement in the judicial branch. While the legal questions are debatable, the political fallout from any change to the presidential mandate could be significant and many will read it as a step backwards in the democratization process. Others have raised the possibility that the ruling party is floating a trial balloon, and if there is too much opposition, the proposals will die on the vine. End summary.

¶2. (U) Responding to a parliamentary question on September 23, Leon Kengo wa Dondo, President of the Senate, confirmed the existence of an inter-institutional commission evaluating the DRC constitution. Radio France International (RFI) carried a story on September 21, in which it cited government sources as confirming the existence of the commission, which was working "discretely." The commission allegedly met the week of September 14 for the first time. RFI reported that the commission was discussing three specific constitutional questions:

-- halting the creation of 15 additional provinces, as foreseen by the constitution by May 2010, a key part of the decentralization process;

-- changing the presidential term, now set at two five-year mandates, to seven years with no term limit;

-- allowing the president to chair the High Council of Magistrates (CSM).

¶3. (C) Government Spokesman and Communications Minister Lambert Mende Omalanga refuted the assertions in the RFI report on September 22, stressing that there were no plans to modify the constitution. The President of the CSM also told RFI on September 22 that he was not aware of any such initiative (Note: In a September 24 meeting with Charge d'Affaires, Mende denied reports there is a plan to change the constitution regarding term limits and that the RFI report was a fabrication by RFI reporter Ghislaine Dupont, who was expelled from the DRC in 2006. Mende also spoke at length about GDRC's decision to revoke RFI's license to

broadcast within the DRC because of objections to Dupont's reporting. Cable on this meeting will follow septel. End note).

¶4. (SBU) The Kinshasa press, opposition parties, and many political observers quickly criticized the proposals, claiming the constitution prohibited any change to presidential mandates or the executive's interference in the judicial branch. Specifically, opponents of the initiative have pointed to Article 220 of the constitution, which stipulates that the number and duration of presidential terms, and the independence of the judiciary shall not be liable to constitutional revision. Opposition Senator Jacques Djoli (MLC), a constitutional law professor, told us QJacques Djoli (MLC), a constitutional law professor, told us that it is possible to amend the constitution, but this would require the approval of the Senate and National Assembly. Kinshasa daily Le Potentiel opined that, if implemented, "this constitutional revision would be tantamount to a coup." The same newspaper compared the proposed constitutional changes to similar moves in Niger, and in contrast to "Ghana's tradition of peaceful government alternation."

¶5. (C) Omar Manis, deputy director of MONUC's Political Affairs Division told diplomats on September 24 that the commission had its origins in the June governors' conference in Kisangani. The commission, according to Manis, is composed of 14 members: six from the presidency, two from the prime ministry, two from the National Assembly, two from the Senate, and two magistrates (Note: UK polcouns told polcouns that the National Assembly members were close confidants of Evariste Boshab, the Assembly's president and a

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staunch Kabila ally. End note).

¶6. (C) Manis noted that these discussions had a precedent in the DRC. In 2007, an AMP deputy reportedly presented a motion allowing the president to chair CSM sessions. After an initial uproar, Kabila magnanimously announced that such a move would not be conducive to the development of democracy. Manis speculated that this had been a trial balloon to test the political waters; the current discussion could also be something similar, perhaps to prime the Congolese for such an initiative further out into the future.

¶7. (C) Comment: While we are not experts on DRC constitutional law, there may indeed be room to amend the constitution. The question is less a legal one, although that is important, and more a political one. While the presidential coalition certainly has the votes to push through these changes, their implementation could galvanize the political opposition, civil society, and even some within the AMP. The GDRC completely muffed the public relations aspect of this issue with senior officials denying the existence of the commission, which Kengo then confirmed. Substance aside, this type of closed-door tactics only fuels the suspicion of many Congolese. On the question of jettisoning the plan to create additional provinces, there are growing voices against what many view as a costly, unnecessary project to add new administrative layers. Finally, it is important to remember that the source of this story is RFI and, specifically, Ghislaine Dupont. Sources have told us that even some senior French officials would like to see her removed as RFI's lead reporter for the Congo (which she is not allowed to visit) because she has crossed the line from objective reporting to allegations based on a personal dislike of the GDRC, which in turn has resulted in the GDRC banning RFI broadcasts here. This does not mean the story on term limits is false, but there may be more here than meets the eye. End comment).

BROCK